

ST 01-0027-GIL 02/02/2001 MANUFACTURING MACHINERY AND EQUIPMENT

Machinery that places tangible personal property into the packaging in which it is sold to the ultimate consumer can qualify for the Manufacturing Machinery and Equipment exemption. See 86 Ill. Adm. Code 130.330. (This is a GIL.)

February 2, 2001

Dear Xxxxx:

This letter is in response to your letter dated November 17, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are requesting a Letter Ruling from your department COMPANY. They are a company that wraps magazines with polyethylene for mailing to subscribers.

These magazines are not printed at our clients business, but shipped in from the printers. The magazines are enclosed with poly by machines and the mailing label with postage is then attached and taken to a mailing depot.

We feel the purchase of the polyethylene, any parts and machine repairs used on these machines should be purchased tax free per ROT Reg Section 130.2070, Wrapping and Packing Material and Section 130.325 Graphic Arts Machinery and Equipment Exception. The poly is transferred to customers as part of the magazine subscription and is an integral part of the mailing and could not be done without these machines.

We would appreciate a Letter Ruling from you to allow our client to purchase tax exempt supplies and repair parts for their machinery. If you have any further questions, please advise. Thank you in advance for your cooperation.

For purposes of our response, we are assuming that the magazine publisher contracts with the printer to have the magazines printed and separately contracts with the packager to have the magazines packaged. We are assuming that the packager is not under contract to the printer to do the packaging work.

The sale of containers, as that term is defined in Section 130.2070(a), copy enclosed, is not subject to Retailers' Occupation Tax when the purchasers of such containers transfer to customers the ownership of the containers together with what is contained in them. Therefore, in general, purchases of packing materials such as shrink wrap are nontaxable as long as they are transferred along with the products contained in them to customers. Purchasers buying containers for this type

of use are generally considered to be making tax-free purchases for resale purposes. Such purchasers must provide their suppliers with Certificates of Resale to document the exemption. Please note, however, that containers would not qualify for the exemption if, after delivery, the seller of the tangible personal property contained in them retained and reused them or discarded them.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred.

Under a second method, if servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis, if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

De minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act may use the final method of determining tax liability. Servicemen may qualify as de minimis, if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax. Please note that such servicemen may not give Certificates of Resale to their suppliers for the property transferred to service customers.

Section 2-5 of the Retailers' Occupation Tax Act, 35 ILCS 120/2-5, provides that gross receipts from proceeds from the sale of graphic arts machinery and equipment, including repair and replacement parts, both new and used, and including that manufactured on special order or purchased for lease, certified by the purchaser to be used primarily for graphic arts production are exempt from tax. "Graphic arts production" means, in part, "printing, including ink jet printing, by one or more of the common processes described in Groups 323110 through 323122 of Subsector 323, Groups 511110 through 511199 of Subsector 511, and Group 512230 of Subsector 512 of the North American Industry Classification System published by the U.S. Office of Management and Budget, 1997 edition." Although your client packages printed material sent to him from the printer, it does not appear that your client is engaged in graphic arts production.

However, notwithstanding the fact that the sales may be at retail, the Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. Machinery and equipment used to place tangible personal property to be sold into the packaging in which that property is normally sold, where such machinery or equipment is used as a part of an integrated manufacturing process, can qualify for the manufacturing machinery and equipment exemption. See 86 Ill. Adm. Code Section 130.330(d)(3)(E). Therefore, packaging equipment used to place tangible personal property such as magazines into the packaging in which the magazines are normally sold would generally qualify for the exemption.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk  
Enc.